Utah Real Estate NEWS

A publication for Utah's real estate professionals

Olene S. Walker, Governor • Dexter L. Bell, Division Director

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Mortgage Referrals and Wearing "Multiple Hats"

There is, and always has been, a close working relationship between real estate agents and mortgage lenders. Each has an important duty in the fulfillment of a successful real estate transaction. Despite their close work association Administrative Rules, Statutes and RESPA clearly set limits on their cooperative relationships.

Administrative Rule R162-6.1.10 states: "A (real estate) licensee may not receive a referral fee from a lender or a mortgage broker." Further, Administrative Rule R162-6.1.9 states that agents cannot pay an unlicensed person for a real estate referral. Similarly, mortgage brokers and other residential lenders are governed by state statute U.C.A. §61-2c-301. It states that it is illegal for mortgage lenders to give or receive compensation in exchange for a referral of mortgage loan business. It is important to remember and follow the defined boundaries of these work arrangements.

Additionally, newly enacted legislation prohibits mortgage licensees from acting as both a mortgage lender and real estate agent in the same transaction (U.C.A. 61-2C-301-(1)(i)). Real estate licensees who also hold a mortgage license may not use both licenses **in the same transaction.** If an individual holds multiple licenses they will have to choose which professional license they elect to use with respect to the same residential mortgage loan transaction, and act ONLY in a single licensed capacity.

The law further declares that business entities may not transact the business of residential mortgage loans with respect to a transaction if the individual **or entity** also acts as a real estate agent, general contractor, and appraiser or escrow agent. Single entities are limited from acting as a mortgage lender and real estate agent, general contractor or appraiser **in the same residential mortgage loan transaction.**

With these new guidelines in mind, the Division is often asked the question "since I cannot act in multiple capacities in a single transaction, may I refer this mortgage business to another entity?" The answer is "yes," since you would not be acting as both the real estate agent and mortgage lender **in the same transaction.** However he/she could NOT receive a referral fee, under the Administrative Rules and Statutes cited above.

Another common question is: "Can I refer a customer to a mortgage company in which the licensee has ownership?" As long as there is no referral fee, this conduct would not violate the mortgage statute that prohibits one from acting as the sales agent and mortgage lender in the same transaction, because he isn't acting as the licensed mortgage lender he is simply referring the business to the mortgage company. Having said that, one should realize that although this practice may not be specifically prohibited by our statutes or rules (for a sales agent to make an uncompensated referral to a mortgage company in which he has an ownership interest), he may be subjecting himself to a potential claim that he has breached his fiduciary duty to the client in the real

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In This Issue

New REPC Takes Effect

A special "thank you" needs to be extended to members of the State Forms Advisory Panel, the Utah Attorney General's Office and Division Director Dexter Bell for recent revisions to the Real Estate Purchase Contract. Their work was completed last August, and this form has been widely available for use since that time. Real estate agents are to use this form (or another state approved form), in all real estate transactions unless a contract drafted by an attorney is used. Older versions of this form may no longer be used and should now be discarded.

A number of improvements and enhancements have been incorporated into the current revision of the REPC. These modifications come after meaningful negotiations involving the real estate industry, the Attorney General's Office, and insurance, title and mortgage company input.

Making changes to The Real Estate Purchase Contract involves critical evaluation of industry practices and an analysis of problems and difficulties experienced with use of the prior REPC.

Recommendations were proposed, compared, considered and evaluated. This process involves compromise to achieve overall agreement. No contract achieves "perfection" since it is an exercise in compromise, yet the Division believes that this contract includes significant improvement over the proceeding version.

The Division has just finished producing a three-hour CE course presented by former Director David W. Johnson, on the REPC. This course does not exclusively discuss changes to the REPC, however considerable discussion is included regarding these modifications. The Division would like to thank Mr. Johnson for his significant contributions on the REPC revisions, and his willingness to make his REPC course publicly available. This CE course will be available at all real estate schools and board offices in April.

Broker Opinions of Value

by Ted Boyer

It is becoming commonly known that some lenders and mortgage brokers in Utah are using real estate licensees to provide opinions on value of real estate for lending purposes as a less expensive alternative to obtaining an appraisal from a licensed appraiser.

Real estate licensees who provide this service must be acting under a misunderstanding of the exemption given to sales agents and brokers under the "Real Estate Appraiser Licensing and Certification Act. Utah Code §61-2b-3(3) and (2) read as follows:

> 61-2b-3. License or certification required
> (1) Except as provided in Subsection (2), it is unlawful for anyone to prepare, for valuable consid eration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being registered, licensed, or certified in accordance with the provisions of this chapter.
>
> (2) This section does not apply to:
> (a) a real estate broker or sales agent as defined by §61-2-2 licensed by this state who, in the ordinary course of his business, gives an opinion:
> (i) regarding the value of real estate;
> (ii) <u>to a potential seller or third party recommending a listing price of real estate; or</u>
> (iii) <u>to a potential buyer or third party recommending a purchase price of real estate:</u>

As you can see, the exemption is rather narrow and does not include providing a valuation of real estate upon which a lending decision is to be made. A broker's opinion of value must be given in the ordinary course of his/her business and can only be given for the purposes of recommending a listing price or a purchase price, not to value collateral securing a mortgage loan.

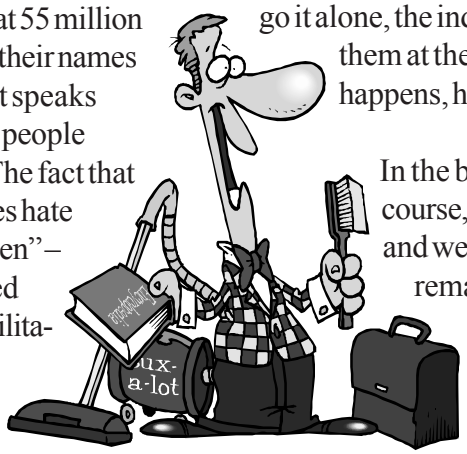
(This article was printed in the January 1998 and August 1999 <u>Real Estate News</u>. It is being reprinted as a reminder.)

Are We Witnessing the Death of Salesmanship?

by Frank Cook

I've been wondering lately if "salesmanship" is dead. You know, the memorized scripts. The "Ben Franklin close," the "12 Ways to Overcome Objections." I wonder if all of that is about to go away.

Certainly, the fact that 55 million Americans have put their names on a "do not call" list speaks volumes about what people think of salesman. The fact that many sales associates hate being called "salesmen" – preferring to be called "consultants" or "facilitators" – shows the industry has a grasp of the problem.



Only part of the dislike of salesmen involves the nuisance of being called at home at awkward times. Another part is our fear that we'll be talked into buying something we don't want. I think that's one reason consumers historically have disliked "real estate salesmen."

But in a real sense, real estate's heightened awareness of agency law has proven to be a natural enemy of that kind of high-pressure salesmanship. Somehow the whole notion of the modern agent trying to talk a client into buying a house seems foreign. (Purists would have us believe that dual agents argue vigorously both for and against any offer on the table, while facilitators stare blankly out a window while the buyer argues with himself.)

That leaves only the great unwashed – the FSBOs and unrepresented buyers – to be the prey of those fast-talking Relat-ors. Personally, I think if the unrepresented feel they are smart enough to go it alone, the industry should take them at their word. Whatever happens, happens.

In the broader sense, of course, salesmanship is alive and well in real estate and will remain so for quite some time. As has always been the case, sales associates still need to learn how to market themselves to the consumer. And certainly listing agents and buyer agents need to be able to argue persuasively on behalf of their clients' offers.

But even beyond that, the real marketing role of the modern agent is to sell confidence. Clients want to be confident their agents know the process, the values and the local economics that shape any real estate deal. To us consumers, there is nothing more important than having confidence that the agent knows all the things we don't know.

In the end, depth of knowledge is the agent's best sales tool.

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Receiving Commissions

Recently the Division has been advised that some real estate agents incorrectly believe that they can be paid their portion of a real estate commission directly from a title company. Presumably, their principal broker's wrongly believe that they can provide written "authorization" to title companies, enabling the agents to be paid directly.

This practice is strictly prohibited. Section 61-2-10 (1) states:

"It is ***unlawful*** for any associate broker or sales agent to accept valuable consideration for the performance of any of the acts specified in this chapter ***from any person except the principal broker with whom he is affiliated and licensed."***

Not even a principal broker can provide authorization that causes another licensee to violate the law. The Division would take appropriate action against any licensee who participates in this unlawful practice.

Please be aware that this procedure is prohibited and a violation of state law.

Home owner's insurance can be deal killer

Checklist to Make Insurance a Door, Not a Wall

Washington

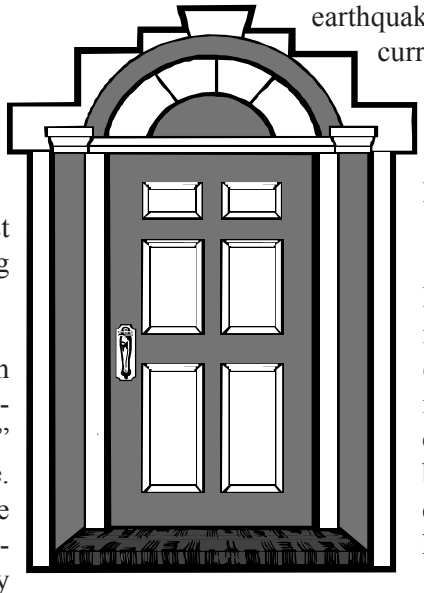
Once considered a slam-dunk afterthought in the real estate transaction, the need for home owner's insurance has become the new killer bee in the business – another hold-your-breath and hope-we-get-it element to put stress on the deal.

"Why" is an interesting question. Some say it's because insurance companies have been hit by a torrent of bogus claims from cash-strapped home owners and hustling lawyers. Others say it's because insurance companies have taken mega hits in the stock market and need to recoup losses.

"Why" also is a largely irrelevant question. If you don't get home owner's insurance, you don't get the loan.

Until the current crisis is resolved, the best practical guidance seems to be: Start looking for insurance early.

"Too often, home buyers wait until late in escrow before trying to obtain, or even considering, insurance for their new home," says the Insurance Information Institute. "But anyone in the market for real estate should not only begin shopping for an insurance policy early in the process, but they should also consider the 'insurability' of the homes they're looking at."



The I.I.I. is offering real estate professionals and consumers this check-list to help ease the process:

Even before you start looking

• Check your own home insurance claim-filing history. Get a copy of your loss history, such as a CLUE report from ChoicePoint or an A-PLUS report from Insurance Services Office (ISO). This is a record of home insurance claims you have filed. If you have not filed any insurance claims in the past five years, you won't have a loss history report. And, depending on the property you ultimately buy, you will most likely not have any trouble getting insurance. The fewer claims, the better.

•Renter's insurance. If you haven't owned a home before, it might be helpful to have a history of insurane when you go to buy your first home.

•Good credit may help you save money on your home owner's insurance. Get a copy of your credit reports. Make sure they are accurate. Report any mistakes. The credit report helps you see how your credit standing com-pares to others. If your credit is not as good as it should be, begin now to improve it.

Consider while house hunting

•Construction of the house. If you are buying in an earthquake region, look for newer homes build to current codes, or older homes that have been bolted to their foundations. If you plan to live near the Atlantic or Gulf coasts, consider a brick home because it is more hurricane resistant.

•Age of the house. Older homes sometimes have features such as plaster walls, ceiling molding and wooden floors that could be costly to replace and could raise the cost of insurance. Make sure you get replacement cost coverage. Also, an older home that has been updated to comply with current building codes is less expensive to insure than an older home that is not up to date.

• Condition of roof and home. If you are considering a "fixer upper," you may pay more for insurance until clear improvements are made. In particular, check out the condition of the roof. A new roof in good repair will be attractive to insurers and will save you money and aggravation.

•Plumbing, heating and electrical systems. These systems can wear out, become unsafe with age or become dated as safer technologies are introduced. Recent upgrades make a home safer and less likely to suffer fire or water damage.

• Safety devices. Homes equipped with smoke, fire and burglar alarms that contact an outside service may get sizable discounts. Strong doors, deadbolt locks and window locks may also reduce insurance costs.

• Pool, wood-burning stove, etc. You will need higher property and liability coverage if you are buying a home with these features. With a pool, consider getting added protection, such as an umbrella policy.

•Quality and proximity of the fire department. Homes near a fire station, those with a hydrant close by and those located in communities with a professional, rather than volunteer, fire department will cost less to insure.

• Location. Homes near the coast are more expensive to insure because of the increased risk of wind, water and hurricane damage. In many states, you will pay the first few thousand dollars in damage before insurance coverage starts. Also think about the threat of floods or earthquakes. You will need separate, more expensive insurance for these risks. There also are high-risk areas vulnerable to hurricanes, brush fires or crime that might not qualify for private insurance. To make insurance available, there are state-sponsored Fair Access to Insurance Requirement (FAIR) plans. FAIR plans, however, can be expensive and provide less coverage.

Making an offer

When you narrow your home purchase choice, consider the following:

•Ask the current homeowner for a copy of the house's insurance loss history report. This provides information regarding claims filed during the last five years and answer two questions that any savvy home buyer should ask. Are there any past problems in the home? If damage occurred, was it properly repaired?

• A thorough inspection of the home is very important. The inspector will check the general condition of the home, show you where potential problems might develop, double-check that past problems have been repaired, and suggest upgrades or replacements that may be needed. If a house has been well-maintained, you should have no trouble getting insurance. However, if the inspector raises questions, your insurance company will as well.

•Don't wait until the last minute to think about insurance. Ask your current insurance agent if the house will qualify for insurance and for an estimate of the premium. The sooner you act, the smoother the process will be.

•Shop around. Most people spend months looking for a house, but spend five minutes insuring it. Insurance companies sell insurance in different ways – some through their own agents, others through independent agents or brokers and still others directly by phone or over the Internet. Get the names of highly regarded insurers. The higher the financial rating, the stronger they are and better prepared to be there if a real disaster strikes.

Purchasing the house and insurance

Consider the following to get the most value for your insurance dollar:

•The higher the deductible, the lower the premium. Since most people only file a claim every 8 to 10 years, you will save money over time and preserve your insurance for when it's really needed:

* 55 years old and retired
* Longtime policyholder
* Upgrades to plumbing, heating and electrical systems
* Earthquake retrofitting to make the home safer
* Wind-resistant shutters

• Make sure you have enough coverage to rebuild the house in the event it is destroyed by fire or other insured disaster, to replace everything in it and to protect your liability in case someone is injured on your property.

After the purchase

• Care for your home properly. If you do your part to reduce insurance losses, not only will your home be safer, it will also save you money on your insurance bill.

• Let your insurer know about alterations, additions and improvements to your home. Major purchases and lifestyle changes such as an aging parent who comes to live with you should trigger a call to your insurance professional.

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"Multiple Hats"

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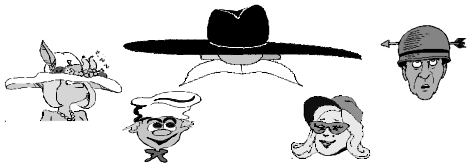
estate transaction. The client could potentially claim that the borrower was referred to the agent's mortgage company because it benefitted the agent, not the parties to the real estate transaction. Therefore, you should proceed with caution in this practice as a means of risk reduction in order to minimize potential civil liability or exposure.

NOTE: If the loan is a federally related mortgage loan, it may be advisable to check to see if it's permissible under RESPA.



Brokers: Breach of Duty of Loyalty is Fatal

In the broker-principal relationship, the duty of loyalty by the broker is fundamental. In a Colorado case, a broker who represented two sets of sellers with regard to the same parcel of property tried to play one party off against the other and ended up losing his right to a comission because he was deemed to have breached the duty of loyalty. *Mabry v. Tom Stanger & Co.,* 2001 WL 206102 (Colo. Ct. App. 2001).

Background Two groups of individuals had separate interests in a land parcel valued at $3.5 million. One group (Jenkins Family) lived near the property; the other group (Absent Sellers) lived elsewhere. Tom Stanger & Co. (Broker) entered into separate listing agreements with the two groups. A development firm (Buyer) delivered to the Broker a full price offer for the property, which was to remain open for only four days. The Broker sent the offer to t he Absent Sellers by express mail and delivered a copy to the Jenkins' attorney. The Broker contacted the Absent Sellers about the offer and asserted its entitlement to a commission under the terms of the listing agreement whether or not the offer was accepted by both groups. The Absent Sellers agreed to accept the offer with minor changes. The Broker then told the Jenkins about the acceptance and again asserted its right to a commission under the terms of the exclusive listing contract. However, the Jenkins prepared a counter-proposal rather than accepting the offer as is. The Broker agreed to submit the counter-proposal as an "accommodation" to the Jenkins. One counter-offer was accepted by the Buyer and a sales contract was executed.

However, the sellers were unable to obtain approval for a subdivision proposal (presumably a condition to the sale) and the sales contract terminated.

Subsequently, the sellers notified the Buyer that they were ready to perform. The Buyer did not respond but instead recorded a notice of claim of interest in the property. This resulted in a lawsuit by the sellers against: (1) the Buyer for breach of contract and quiet title relief; and (2) against the Broker for breach of fiduciary duty. The Broker filed a counterclaim for its commission. As to the latter claim and following a bench trial, the court found that Broker had breached its fiduciary duties to sellers and was not entitled to a commission. The Broker appealed.

Duty of Loyalty The appellate court affirmed the decision. It said a broker for a seller has a fiduciary duty to act with the utmost good faith, loyalty and fidelity. The broker also has a duty to inform the seller of any facts that may reasonably affect the seller's decision. Breach of this duty will cost the broker his commission even if the seller has not suffered any demonstrable harm.

Broker's Actions The court said that the breach of duty of loyalty was supported by evidence that the Broker pressured the two groups of sellers to accept Buyer's offer. As the trial court found, Broker had "played one Seller against the others" by telling the Absent Sellers that they must accept the sale proposal because Broker had already earned its commission; and then using that acceptance to pressure the Jenkins to sign.

Also, in its communications with the sellers, the Broker failed to point out that its listing agreement with the Absent Sellers had already expired at the time the offer was received. Finally, in a letter to the attorney for the Jenkins, Broker's attorney asserted that "a commission has been earned and will be collected either through a closing or litigation." As a result of these actions, the Absent Sellers testified that they were under considerable stress because they were being threatened with a commission claim whether or not they accepted the offer, a claim they could not satisfy without a sale.

In addition to all of this, the trial court found that the Broker had failed to convey all offers on the property to the Absent Sellers.

Breach Not Ratified By Sales Contract Broker next argued that it was entitled to its commission in any case because any breach of duty had been ratified by the sellers once they: (1) signed the contract of sale; (2) maintained an action on the contract; and (3) retained the earnest money from Buyer. However, the court ruled that sellers' signing of a contract would amount to a ratification only when the broker's breach of duty consisted of entering into an unauthorized transaction. Here, Broker's breaches took the form of pressuring sellers in the Broker's self-interest and failing to disclose material information – a breach of duty of loyalty.

Real Estate Law Report

Extensions and Renewals

In *Utah Coal and Lumber Restaurants, Inc. v. Outdoor Endeavors Limited*, 2001 Utah 100, 2001 WL 1477916, the original lease was for a commercial property in Park City, Utah, with an initial five-year term with three five-year options to extend. It contained a "window" during which tenant was required to notify the landlord of its option to renew. The annual rental was $33,000. The property was in significant disrepair when Tenant leased it, and Tenant expended $105,000 – or over three times the annual rent – in repairs in the first few months. Tenant expended this money because it fully intended to remain on the lease for the full twenty years of the initial term and renewals, and landlord was aware of this.

In 1998, likely with everyone fevered over the likelihood of the Winter Olympics coming to Park City, Tenant was having significant internal difficulties. The business's cross-country skiing license was in jeopardy, a critical employee, and the owners were faced with non-business family problems. Tenant was supposed to give notice of intent to renew between May 13 and July 11. It failed to do so. On July 15, Landlord sent notice that the lease would expire at the end of the present term, and Tenant promptly attempted to effect a late renewal, which Landlord rejected.

The trial court found that Tenant's failure to timely renew was an "honest and justifiable mistake" and, in light of the short delay, would not injure Landlord, while the injury to Tenant would be significant in light of its investment in the property and the business. It found that the renewal was valid.

On appeal; Held; Reversed: Although the Utah Supreme Court acknowledged that it had recognized an equitable exception to the usual rule that options to renew must be timely, it noted that the precedent had not set forth any standards as to what circumstances would justify invoking the exception.

Citing cases involving other equitable issues, not involving lease renewal, the court commented that equitable relief should not be used "to assist on in extracting himself from circumstances which he has created. . ." It concluded that its precedent had permitted the invocation of equity to "cases of fraud, misrepresentation, duress, undue influence, mistake and waiver."

With that foundation laid, the present case was a no-brainer. "Equity should not be applied in situations in which the lessee's negligence, inadvertence, or neglect caused the failure to exercise a lease renewal option." The court noted that other jurisdictions have been more generous, weighing the degree of harm to the landlord if the lease is renewed against the loss to be suffered by the negligent lessee if renewal is denied. It notes in particular a 1922 Connecticut case for this approach. But it concludes that in Utah courts should not so revise the contracted for bargain that the parties made. To follow the Connecticut rule would swallow the basic principal of strict compliance and "apply equitable excuse in almost all cases."

In the instant case, Tenant's negligence did not arise from mistake, but from simple oversight.

> "A mistake within the meaning of equity is a non-negligent but erroneous mental condition, conception or conviction induced by ignorance, misapprehension, or misunderstanding, result ing in some act or omission done or suffered by one or both parties, without its erroneous character being intended or known at the time."

Further, even if there were a mistake, it would have had to satisfy the equitable standard for an excusable mistake, which in general does not include unilateral mistakes.

REEA

In Memoriam

The Division of Real Estate expresses condolences to the families of Thomas Francis Rogan, Wilford W. Cox, Ralph E. Pitts, Harold A. Bezzant, Bonnie E. Crus, Marjorie S. Harvey, Jerry A. Duffin, Robert F. Cook, Mollie T. Lyle, Paul Randolph Freeman, and Thomas E. Flinders who passed away recently.

Court Tries to Decide Whether 'Puffery' is Legal, and How it Relates to Agency Relationships

Puffery and agency
Kearney v. J.P.King Auction Company, No. 00-1837, No. 00-1910, 1st Cir. Sept. 13, 2001

This Maine case focused on an auction that went badly for the land owner, Merrill Kearney, and questioned whether the auction company had made statements that Kearney should have relied upon its promises of value. In the end, the federal appeals court ruled in favor of the auctioneer.

In February 1997, Kearney purchased 80 acres of undeveloped waterfront land in Lubec, Maine, for $90,000. Shortly thereafter, Canadian businessman and friend Donald Long offered Kearney $1.8 million for the property and an informal agreement was struck.

Before the agreement could be finalized, however, Kearney was contacted by King Auction company representative Michael Keracher, who asked Kearney to hold off the sale until Keracher could evaluate the property and make a proposal to sell it at auction.

Kearney, with Long's permission, agreed to let Keracher take a look.

Kearney testified that during that one-hour evaluation, Keracher told him the property was worth far more than $1.8 million. Although Keracher denied naming amounts, Kearney testified Keracher mentioned sums between $3 million and $10 million. Kearney also said Keracher mentioned that King auctions often drew "heavy hitters" as participants – suggesting that movie stars might join the bidding.

Long withdrew his offer and left Kearney free to pursue the auction.

When Kearney and Keracher returned to Kearney's office to draw up an agreement, Kearney said Keracher advised him that to get the maximum number of bidders, the auction should be conducted as "absolute" (Kearney would be bound to accept the highest bid) rather than "reserve" (in which the owner retains the right to keep the property if a threshold price is not met).

Kearney agreed to the absolute auction.

Testimony showed the auction company advertised the sale in the Wall Street Journal and a Hong Kong newspaper. Brochures were distributed to the auction company's mailing list.

On the day of the auction, however, only two bidders showed up, and one of the bidders dropped out as soon as the price hit $100 per acre. The successful bidder did bid $100 per acre and purchased the entire tract for just $8,000. (The land owner refused to convey the land, but the bidder went to court and Kearney was forced to forfeit the property.)

Kearney sued the auction company, making a raft of allegations, including breach of contract, negligence, breach of fiduciary duty, negligent misrepresentation, fraudulent misrepresentation, punitive damages, negligent infliction of emotional distress, intentional infliction of emotional distress and unfair trade practices.

The lower court threw out most of the contentions and, on appeal, the federal court upheld the dismissal and threw out the other allegations as well. In making its ruling, the federal court said Kearney should not have relied on Keracher's value claims, saying that "trade talk" or "puffing" was a long-understood sales tactic that does not represent a guaranteed price. Likewise, the court said the fact that "heavy hitters" had participated in other auctions should not have been taken as assurance they would show up for this sale.

The court paid particular attention to the timing of the puffery compared to when the agreement was signed.

Kearney said the puffery was a violation of the auctioneer's fiduciary duty and agency relationship.

The high court, however, rejected that argument, saying the statements were made as an inducement to get Kearney to hire the auction company and that no agency relationship was formed until after the agreement was signed.

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Here's Why You Should Take the Final Walk-through

by Wendy Volk

With the closing only days away, there's just one detail left – the walk-through. This final inspection prior to closing allows a homebuyer to reconfirm the condition of the house and property he or she has agreed to purchase. This step includes verifying that requested repairs have been made and that appliances and other items are present or have been removed, depending upon the contract. To guarantee the homebuyer's right to a final walk-through, a provision may need to be added to your sales agreement.

Do Not Assume Anything

A homebuyer typically closes on property within three months of signing the sales agreement. But much can happen in 90 days, especially on the seller's moving day. Even specifying in the agreement what stays and what goes – namely chandeliers, fixtures, designer drapes, wall-to-wall carpeting, built-ins, outdoor lighting, sheds, and plantings – does not ensure compliance. On moving day the seller may not have a copy of the agreement handy to refer to or may not closely oversee the movers. Stored belongings or debris may be forgotten. For instance, that rusted skeleton of an automobile behind the shed may, because it's out of sight, stay far out of mind.

Occasionally, some sellers may not adhere to the agreement. For anecdotal evidence supporting the necessity of a walk-through, search Internet forums relating to home ownership. Here, disappointed homebuyers regrettably report the results of declining their right to a walk-through or not thoroughly inspecting the house and property.

In one posting, a first-time homebuyer described how the sellers had gone to great lengths, and heights, to hide debris. They had installed a second fence 10 to 12 feet inside the original fence, which ran along the back of the property. From the house, only the inner fence was visible. One day a strong windstorm uncovered the second fence, revealing mounds of junk that had been dumped between the two fences. The current owner had to remove the broken fencing and arrange to have the debris carted away.

Timing is Everything

It is recommended to schedule the final walk-through close to the settlement date but allow enough time for the seller to remedy problems. Aim for within seven days of the closing, preferably after the sellers have moved out since damage can occur during the move. Also, it's best to inspect an empty house. Furniture and wall coverings can hide a multitude of sins – from stained or threadbare carpeting to scratched hardwood floors and major cracks in walls.

Leave Nothing Out

Another recommendation is to accompany the homebuyer to witness the walk-through, and take along a small appliance to test electrical outlets. As you survey the property, use your sales agreement as a checklist to verify that things are as they should be. Test everything. Run the washer, dryer, garbage disposal, and dishwasher; flush toilets, turn on faucets and look for leaks. Inspect the house from the bottom up, and make a point to check for forgotten items in the basement, crawl spaces, storage rooms, and attic. In carpeted rooms, focus your attention on areas that had been covered by furniture or other objects. Outside, look through the garage and shed, then walk around the yard and out to the property line.

By taking time now to thoroughly inspect every inch of the house and property, you may eliminate surprises later on. Although this final walk-through doesn't give the homebuyer the right to walk away from the purchase agreement, it's best to identify problems and negotiate

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Walk-through cont.

resolutions while you still have leverage.

Oh, No!

You've discovered ugly brown stains on the living room carpet and a leak in the bathroom. Now what? Be sure to make the cooperating real estate professional aware of your findings immediately. Most sellers want to remedy problems to the buyer's satisfaction. After all, it's in the best interests of both the buyer and the seller to close according to plan. A postponement could be costly: The buyer's locked-in interest rate on the financing may expire, requiring a renegotiation of a new rate; new loan documents would generally incur a "redraw" change; and the seller may have earmarked the proceeds from this sale for the purchase of a new home.

If some or all the problems are remedied before the closing, insist on a second walk-through. Any remaining items can be dealt with at the table.

Although a preclosing inspection takes time and may be inconvenient, don't decline the homebuyer's right to one. As the Internet forum participants can attest, protecting your interests is time well spent.

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Real Estate Disciplinary Sanctions

ALEXANDER, CONNIE G., Inactive Sales Agent, Tooele. Agreed to complete remedial education before activating her license and that her license will be on probationary status for two years once it is activated, for violation of Administrative Rule R162-6.2.1.4 on Standard Supplementary Clauses. Acting as seller's agent, Ms. Alexander wrote a counter offer that included the language, "Seller requests 72 hour right of refusal" instead of using the Standard Supplementary Clause named "Option to Keep House on Market" approved by the Real Estate Commission. Ms. Alexander thought that by referring to a "72 hour right of refusal," it was a shorthand way to incorporate the language of the Standard Supplementary Clause into her contract. When a second buyer became interested in the property, and the first buyer refused to comply with the language of the Standard Supplementary Clause, Ms. Alexander advised the sellers they could cancel the contract with the first buyer and sell to the second buyer, which they did. Complicated and protracted litigation resulted. #RE98-10-28.

CHARLES Q. GREENWOOD and GREENWOOD PROPERTY MANAGEMENT, Unlicensed, Layton, Utah. Cease and Desist Order issued August 27, 2003 prohibiting acting as a property manager for compensation until such time as they become properly licensed with the Division. #RE03-07-11.

CHRISTENSEN, JOSHUA aka JOSH, Inactive Sales Agent, North Salt Lake. License revoked by default on July 16, 2003 because of being unworthy or incompetent to act as a sales agent in such manner as to protect the public and because of conviction of a criminal offense involving moral turpitude. Mr. Christensen was convicted of Possession of Methylenedioxymethamphetamine ("Ecstasy") with Intent to Distribute and is currently serving a 64 month prison term. #RE02-04-22.

EVES, JOYLENE K. and PAUL G. EVES, Orem, and WILLIAM D. TOOKE and HIDDEN VALE MANAGEMENT, INC., Provo. Cease and Desist Order issued August 13, 2003, prohibiting the Eves from: holding themselves out as engaged in real estate sales activity or property management activity that requires a license; from participating in property management that requires a license other than as "support services personnel"; accounting for and disbursing rents collected for others; authorizing expenditures for repairs to others' real estate; or owning or managing a property management company. The order prohibits Mr. Tooke and Hidden Vale Management, Inc. from allowing the Eves to manage Hidden Vale Management, Inc. or to act on behalf of Hidden Vale Management, Inc. in any capacity that requires a Utah real estate license. At the time of publication, Joy and Paul Eves had requested a hearing on the Cease and Desist Order but no hearing had yet been held. #RE03-07-23.

FLANNIGAN, NANCY V., Principal Broker, Metro Realty, Salt Lake City. Agreed to pay a $500.00 fine and complete the Division Trust Account Seminar because of violation of Rule R162-4.2.7, which requires a written release to disburse funds if there is no contract language authorizing disbursement. Ms. Flannigan wrote up a new offer for her buyers that carried forward the seller disclosure deadline and the evaluations and inspections deadline from a previous offer. Realizing that those dates were no longer practical, Ms. Flannigan intended to extend them by adding, "Seller will work with buyer on home inspection scheduling and report to buyer with three days review time." After the transaction failed, the buyers claimed that they could cancel the contract based on that language, and the sellers claimed that the buyers had defaulted by not doing their inspection by the deadline. Ms. Flannigan, acting in the belief that the buyers had legally cancelled the contract, transferred their earnest money deposit to a new offer with a different seller. #RE20-07-12.

GALE, MARTIN J., Associate Broker, formerly with Century 21 Preferred Realty in Salt Lake City. Agreed to pay a $1,000 fine and complete the Division of Real Estate Trust Account Seminar and a course in real estate broker and agent ethics for violating U.C.A. §61-2-

10(1). The Division alleged, but Mr. Gale did not necessarily agree, that after Mr. Gale and his former business associate and principal broker decided to part company, the principal broker removed Mr. Gale as a signatory on the brokerage trust account, but not on the operating account, and Mr. Gale caused funds to be transferred from the trust account to the operating account and withdrew them. Mr. Gale maintains, but the Division does not necessarily agree, that he was owed the funds as commissions and that his former principal broker was unreasonably withholding the funds from him. #RE97-04-10.

GOON, MICHELLE R., Sales Agent, formerly with Wardley GMAC Real Estate, Layton. Agreed to pay a $400.00 fine because of breaching a fiduciary duty owed by a licensee to a principal in a real estate transaction. Ms. Goon represented both buyers and sellers in a transaction and did not disclose to the sellers that the buyers' earnest money check had bounced although she was diligent in obtaining a replacement check. When the settlement deadline passed, the parties were agreeable to an extension until April 15, 2000, but no extension was filled out. When April 15, 2000 had passed, the sellers declared the buyers in default. The buyers complained to the Division, alleging that they thought they were still within the time they had to obtain financing when the sellers terminated the transaction. #RE20-05-28.

GUNNELL, BRANDON, Sales Agent, Ulrich Realtors, Salt Lake City. Agreed to pay a $500 fine and complete an ethics course for violation of U.C.A. §61-2-11(8). At the time that Mr. Gunnell purchased the property involved in the complaint, there had been a question about access to the property. He later learned that there was a recorded right of way for access to the parcel. Two years later, he sold the property. A neighboring property owner thereafter blocked the access of Mr. Gunnell's buyers to their property by piling a hill of dirt on the right of way. Mr. Gunnell's buyers subsequently discovered that he had not disclosed to them everything that the parties from whom he purchased had disclosed to him. Mr. Gunnell maintained that in mitigation, the adjacent property owner never took steps to block his access and he did not think there would be any problems with his buyers obtaining access to the property. #RE02-12-22.

HAWKES, SHERMAN B., Principal Broker, Hawkes and Company, Bountiful. Effective November 19, 2003, Mr. Hawkes was fined $1,000 and had his license placed on probation for two years, during which time he may not provide property management services for any real property that is owned by anyone other than himself, his immediate family, or a family trust owned by his immediate family of which he is the trustee. During that same period, he may not have any sales agents or associate brokers licensed with him engage in property management for others. Mr. Hawkes failed to exercise reasonable supervision over former real estate sales agent Douglas Reynolds when Mr. Hawkes agreed to act as the principal broker for Harbor Place Management Realty, Inc. Mr. Hawkes had declared in writing to the Division that he was aware of restrictions that had been placed on Mr. Reynolds' probationary license and that he would agree to comply with those requirements, including a requirement that Mr. Reynolds could only sign on a trust account if two signatories were required. In some instance, Mr. Hawkes signed as the second signatory on trust account checks after they had been issued by Reynolds and had already cleared the bank. #RE20-03-17

LARSEN, ALTON R., JR., Principal Broker, formerly principal broker of Homefinders Realtors in Salt Lake City. For violation of Utah Code 61-2-11(8) by failing to maintain his trust account and accounting records, Mr. Larsen agreed: 1) to surrender his broker license effective August 20, 2003 and be issued a sales license in its place; 2) that he will not apply for a new broker license for at least three years; 3) that he will not own or operate an active Utah real estate brokerage for at least three years; and 4) that for at least three years he will not use the sales agent license issued to him to work for a licensed principal broker in any capacity that would require him to be responsible for, or assist in, maintaining brokerage accounting records or the brokerage real estate trust account. A June, 2000 Division audit of Mr. Larsen's brokerage determined that, although Mr. Larsen's trust liability was at least $25,000.00 in August, 1997, the amount on deposit in his trust account at that time was $22,243.33, and that the balance in the trust account was not brought back up above $25,000.00 until August, 1998. Among other things, the audit also determined that $656.38 of the funds that were diverted between August, 1997 and August 1998 involved nine checks written by Mr. Larsen's wife for personal expenses. In October, 2000, the bank at which the account was maintained took responsibility for the checks written by Mr. Larsen's wife since she was not authorized to sign on the account and reimbursed $656.38 to the brokerage.
#RE01-06-11, # RE35-00-09.

LLOYD, JOAN N., Sales Agent, formerly with Coldwell Banker Residential Brokerage, Main Office, Midvale. Agreed to pay a $500 fine and complete an ethics course. Ms. Lloyd sold a home that she owned and in which she lived, and did not take reasonable efforts to verify the accuracy and content of the listing. #RE03-06-11

LYONS, BONNIE, Sales Agent, formerly with Wardley GMAC, Layton office. Agreed to pay a $500 fine and complete an ethics class for breaching a fiduciary duty to a principal in violation of U.C.A. §61-2-11(16). Ms. Lyons agreed to contribute a portion of her commission to a transaction to make the transaction work, but then did not make the contribution. Ms. Lyons maintained that in mitigation, she was unable to pay because her assistant took the funds and left the State of Utah and because she herself was involved in a serious traffic accident. #RE03-01-04.

MCENTIRE, DONALD R., Principal Broker, McEntire Real Estate, formerly of Utah, now located in Kihei, Hawaii. Agreed to pay a $500 fine and complete the Division of Real Estate Trust Account Seminar for violating the rule that requires earnest money to be deposited upon acceptance of offer and the rule that requires all transactions to be assigned a separate transaction number. Three days after acceptance of an offer, the buyers attempted to cancel the contract. Mr. McEntire held the earnest money check undeposited. Two weeks later, the buyers authorized him to release the earnest money to the sellers. He endorsed the earnest money check over to the sellers, but when the sellers

tried to negotiate the check, payment was refused due to insufficient funds. #RE20-06-09.

NAGLE, SCOTT G., Sales Agent, American General Real Estate, Salt Lake City. Agreed to pay a $200.00 fine because of violation of Rule R162-6.1.5.8 by advertising a property without the written consent of the owner or the listing broker. Mr. Nagle ran a newspaper ad for a home that was listed with another brokerage without stating the property address, but stating the neighborhood, size, square footage, and an asking price. The ad solicited buyers to contact "Buyer's Agent Scott" at American General Real Estate. The ad also characterized the property as a foreclosure when in fact the property was not a foreclosure. Neither the owner of the property nor the listing brokerage had given Mr. Nagle permission to advertise the home. #RE03-07-17.

SCHAERRER, CADE, Sales Agent, Pleasant Grove. Application for sales agent license approved on April 16, 2003, but license suspended until such time as he was released from criminal probation in connection with a misdemeanor conviction. He was subsequently released from criminal probation and activated with Americraft Realty, Inc. in Orem on June 20, 2003.

TAYLOR, DAVID L., Associate Broker, ERA Realty Center, Inc., Cedar City. Agreed to pay a $750 fine for violating administrative rules R162-4.2 and R162-6.1.11.5. Mr. Taylor agreed to help find tenants for the owners of a home when the owners had to move out of state. He admitted that in his eagerness to help the owners, he did not sign a property management agreement with them. He also erroneously used his own checking account for the rental activity instead of running the funds through the trust account of the brokerage with which he is licensed. Mr. Taylor maintained that in mitigation, he voluntarily took the Division of Real Estate Trust Account seminar after the time period involved in the complaint, once in February, 2002 and again in the fall of 2002. #RE20-05-24.

WILLIAMS, SCOTT L., Sales Agent, licensed with Wardley Better Homes and Gardens Midvale Branch at the time of the offense. Agreed to pay a $1,500 fine and complete the Division of Real Estate Trust Account Seminar and a Division-approved course on agency for acting incompetently in a transaction. Williams purchased a condo from a couple who agreed to provide seller financing on the transaction. He made two payments on the condo, but then made no further payments, so the sellers commenced foreclosure. Meanwhile, Williams had quit-claimed his interest in the condo to another party who occupied it and refused to vacate. After the sellers evicted the occupant, they found that the refrigerator and stove were missing and that the property had been vandalized. #RE20-11-19.

Mortgage Disciplinary Sanctions

FARNSWORTH, JESS, Owner of Mortgage Executives, Toquerville, Utah. Agreed to a 60 day suspension of his individual registration effective May 7, 2003 and that he will pay a $1,500 fine because his unregistered assistant created a false verification of deposit and forged the name of the depository representative on it. Mr. Farnsworth maintains that in mitigation the loan is still performing and that he terminated his assistant when he found out what she had done. During the Division's investigation, Mr. Farnsworth identified the assistant as "Carrie Shaw." The Division learned that "Carrie Shaw" was really Mr. Farnsworth's daughter, Carrie Farnsworth Cook. #MG03-02-04.

MAURER, BARON, Formerly the Control Person for The Lending Company, Salt Lake City. Agreed to pay a $500 fine for violating the Utah Residential Mortgage Practices Act by failing to require the other six individuals who worked for The Lending Company to promptly register with the Division and by failing to notify the Division when he left The Lending Company and moved to Hawaii. Maurer maintained that in mitigation he was the Control Person in name only and that he was not allowed to have any actual control over the company or over the employees and their actions. #MG01-11-22.

MOLINA, CARLOS M. "MICHAEL," formerly Control Person for Beacon Hill Mortgage, Murray. Agreed to pay a $1,500 fine for: 1) Changing the name under which Utah residential mortgage business was conducted from Beacon Hill Mortgage to Pryme Investment & Mortgage Brokers without changing the name with the Division; 2) Failing to disclose to the Division that the Idaho Department of Finance revoked the registration of Pryme Investment & Mortgage Brokers dba Beacon Hill Mortgage; and 3) Beacon Hill/Pryme having participated in a transaction in 1999 involving misrepresentation on a loan application. Mr. Molina's individual registration was renewed as part of the foregoing settlement, the registration of Beacon Hill Mortgage has expired, and the application for registration of Pryme Investment & Mortgage Brokers has been withdrawn. #MG02-05-34.

Did You Know?

Due to a change in the licensing software at the Division of Real Estate, licensees now have new license numbers. These numbers are available on our Website at: www.commerce.utah.gov/dre. From the home page select 'licensing,' then 'licensee database.' The information is available in text format or Excel. Included, along with both old and new license numbers, is the license status, issue date, expiration date and brokerage affiliation.

If you're thinking you need a license history, the information available there may suffice.

Appraiser Disciplinary Sanctions

ADAMS, J. MICHAEL, State-Certified Residential Appraiser, Orem, Utah. Surrendered his appraiser certification effective September 24, 2003, with a State License to be issued in its place. Mr. Adams also agreed that for two years he will not supervise or sign for any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Adams appraised a home constructed by Salisbury Development at $132,000 and did not analyze the current $110,200 contract of sale on the property. The comparables used were between 29 and 54 blocks away, although numerous comparables were available in the same subdivision. In another case, Mr. Adams appraised a Salisbury Development home at $137,000 that buyers had contracted to purchase at $108,200. The comparables used were between 26 and 33 blocks away although numerous comparables were available in the same subdivision, including a home that Mr. Adams had just himself purchased for $108,000. In a third case, Mr. Adams indicated on an appraisal report done for a buyer's purchase money loan that it was for a refinance. #AP98-06-07, #AP99-06-18, #AP20-03-01, #AP01-05-14, #AP01-08-07, #AP01-08-08, #AP01-08-54, #AP01-08-55, and #AP01-10-23.

BODELL, J. MARTELL, SR., State-Certified Residential Appraiser, Salt Lake City, Utah. Agreed to pay a $2,500 fine, and that he will not supervise, train, or sign for any Licensed Appraiser, trainee, or unclassified person earning points for licensure for at least one year from June 25, 2003, but he will be permitted to supervise certified appraisers and to sign reports with other certified appraisers. Mr. Bodell admitted USPAP violations by generating only the second page of a URAR form and signing it in conjunction with a tax appeal on property in which he had a partial interest, and by failing to adequately supervise a junior appraiser who either did not show or did not analyze sales and listing history in his reports, and who did not properly treat seller concessions in his reports. #AP01-12-01,#AP02-04-15, #AP02-15-16,and #AP02-07-12.

CAMPBELL, TROY A., State-Certified Residential Appraiser, Draper. Agreed to pay a $500 fine and complete a USPAP course for violation of USPAP Standards Rule 2-5, which provided that an appraiser who signs a report prepared by another accepts full responsibility for the appraisal and the contents of the appraisal report. Although Mr. Campbell's office had Multiple Listing Service access to sales similar to the subject property, the sales comparables used by the registered appraiser who prepared the report were outside of the neighborhood defined in the report. Mr. Campbell maintained that in mitigation, he released the registered appraiser from his employment because of issues related to the appraisal in this case. #AP20-11-14.

CARLSEN, PAUL KENT, State-Certified Residential Appraiser, Logan Utah. Agreed to pay a $2,500 fine, complete remedial education, and have his certification placed on probation for two years from June 25, 2003 because of the following errors and USPAP violations in a number of different appraisel reports: erring in the determination of the highest and best use of property that would be landlocked by a proposed subdivision, failing to make it clear in an appraisal of a lot that the appraisal was subject to a home being moved to the lot, making inconsistent adjustments in an appraisal report or failing to make adjustments, failing to maintain documentation in the work file to support the cost approach in an appraisal report, and making numerous errors in a report that in the aggregate made it misleading. Mr. Carlsen also agreed that for two years from June 25, 2003, he will not supervise or sign for any other appraiser, appraiser trainee, or unclassified appraiser. #AP20-09-09, #AP20-03-18, #AP01-02-10, #AP95-11-04, #AP96-03-01, #AP98-06-25, #AP01-03-29, #AP98-09-05, #AP02-01-09.

CARROLL, HOWARD R., State-Certified General Appraiser, Vernal, Utah. Agreed to surrender his State-Certified General Certificate status effective June 28, 2003 and be issuee a State -Certified Residential certificate in its place, that the State-Certified Residential certificate shall be on probationary status for two years, that he shall not supervise or sign for any other appraiser, trainee or unclassified person for two years, that he will pay a $2,500 fine, and that he will complete a USPAP course. Mr. Carroll admitted that he violated USPAP in three appraisals by failing to employ recognized methods and techniques, but maintained that the violations were not intentional and were a result of not having adequate experience in appraising farm property. #AP93-04-04, #AP94-06-05, and #AP95-06-09.

CARTER, MIKE L., State-Certified Residential Appraiser, South Jordan, Utah. Because of USPAP violations in three appraisals, Mr. Carter agreed to pay fines totaling $2,500 and to complete a USPAP course. In one appraisal, the Division alleged that Mr. Carter chose comparables in superior locations. Mr. Carter disputed that, but admitted violation of USPAP Standards Rule 1-1. In the second appraisal, Mr. Carter signed in a supervisory capacity on an appraisal that reported that the subject sold for more than it did. In the third appraisal, the Division alleged, among other things, that all of the comparables were from a superior area. Mr. Carter denied any intent to mislead but admitted that he violated USPAP in that appraisal report by failing to adequately supervise the registered appraiser who completed the report. #AP99-05-09, #AP01-12-31, and #AP02-05-15.

CHARLESWORTH, TYLER, State-Certified Residential Appraiser, Roy, Utah. Agreed to pay a $1,000 fine and complete the 2004 USPAP Update Course for violating USPAP Standards Rule 1-1(b) by commission of a series of errors that significantly affected the appraisal, and USPAP Standards Rule 1-5 (b) by failing to analyze a prior sale of the property. The appraisal report in question did not disclose that the lot was a non-conforming lot, that there was no vehicular access over the property, or that only on-street parking was available for the property. The report did not show the correct owner of record at the time of the appraisal. In addition, the report indicated that the condition of the property was average, but the selling agent reported that it was in sub-standard condition and needed substantial repair. #AP02-05-08

CHRISTENSEN, J. STEWART, State-Certified Residential Appraiser, Ogden, Utah. Application for renewal of certification surrendered effective June 25, 2003. Mr. Christensen agreed

that for at least two years thereafter he will not own or manage a company that appraises in Utah, and that he will not work for a Utah appraiser as a trainee, as an unclassified individual earning points for licensure or certification, as clerical support staff, or in any other capacity. He also agreed that he will not apply for a new appraiser license for at least two years. #AP75-02-09, #AP99-08-01, #AP01-04-20, #AP01-008-41, #AP01-11-10.

DICKERSON, PATRICK K., State-Certified Residential Appraiser, Farmington Utah. Agreed to pay a $3,000 fine and complete a USPAP Update Course for violating USPAP by failing to adequately identify the appraisal problem, failing to correctly identify the intended use of the appraisal, and failing to analyze what he understood to be a prior purchase of the property. Mr. Dickerson understood that he was doing an appraisal for a refinance, but he had to contact a real estate agent to gain access to the vacant and keyboxed home. He found a listing on the property in the Multiple Listing Service at a sales price of $750,000 but maintains that he did not know how to access the listing history on the property and therefore did not know that the property had been advertised for sale until one week before at a price of $499,000, at which time the price had been increased to $750,000. He thereafter revised his appraisal to reflect a value of $750,000. #AP-20-05-26

CLOWARD, JOSEPH D., State-Certified General Appraiser, Eagle Mountain, Utah. Agreed to pay a $500 fine and take a USPAP course for signing a registered appraiser's report that violated USPAP and that had a final value that was not supported by the data in the workfile. Mr. Cloward admitted that during the three-month period during which he signed appraisals for the then-registered appraiser, he was at times rushed and did not always adequately supervise the registered appraiser. Mr. Cloward maintains that he terminated the association because he did not have adequate time to train or supervise the registered appraiser, and that he has not signed for any other appraiser either before or since that time. #AP20-08-19

HAMPTON, JEFF A., State-Certified Residential Appraiser, Orem, Utah. Agreed to pay a $500 fine and complete a USPAP course for USPAP violations in an appraisal in which he acted as the supervisory appraiser. The appraisal report contained a number of errors and used comparables that were farther away from the subject and in neighborhoods superior to the subject than more appropriate comparables that were available. #AP20-20-03

HANSEN, PHILIP L., State-Certified Residential Appraiser, Las Vegas, Nevada. Surrendered his appraiser certification effective September 24, 2003, with a State License to be issued in its place. Mr. Hansen also agreed that for two years he will not supervise or sign for any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Hansen's comparable #1 was identified as a split level home when, in fact, the property at that address was a 12-plex. There was no house but only a vacant lot at the address of Comparable #2. Mr. Hansen maintains that in mitigation the errors were typographical errors. The report also did not disclose that the subject property was being used as a junk yard. In the second case, Mr. Hansen did a November, 2002 "as is" appraisal of property identified as new construction when in fact there was no home on the lot and a 1993 manufactured home was to be moved to the site. #AP98-01-23, and #AP03-02-06.

HARWARD, JUD, State Certified General Appraiser, Springville, Utah. Agreed to pay a $1,500 fine in one case in which he admitted that his appraisal of the Lee Lemmon property in Huntington did not fully comply with USPAP and agreed to have a correction letter placed in his file in another case warning him that an appraiser must comply with USPAP regardless of any client instruction to the contrary. Mr. Harward maintained in the second case that he understood that he had been instructed by the court that he was not to comply with USPAP in a court-ordered appraisal. #AP98-01-01, #AP99-03-11, and #AP99-11-17

HOLDAWAY, ANITA LOUISE, State-Certified Residential Appraiser, Provo, Utah. Agreed to pay a $500 fine, complete a 2003 USPAP course, and that she will not supervise or sign for any other appraisers, trainees or unclassified persons for two years because of a report she signed for a Registered Appraiser that violated USPAP Standards Rule 1-1(a) in that inappropriate methods were used. The complaint filed with the Division alleged that the value of the subject property was overstated and that there were a number os USPAP violations in the report. Ms. Holdaway maintains that in mitigation the report seemed reasonable based on information presented to her. #AP99-10-13.

JORGENSEN, ROBERT C., State-Certified Residential Appraiser, West Jordan, Utah. Agreed to pay a $1,500 fine for USPAP violations in: 1) a 1998 appraisal report that contained an unusually high site value, improperly performed cost analysis, and distant comparable sales although closer and more similar comparables were available; and 2) two 2000 appraisal reports for the same borrower on two different properties in which the complaining party alleged that he failed to consider the current listing price of the properties. Mr. Jorgensen maintains that in mitigation he did not recognize the difference between the subject and the comparable neighborhoods in the 1998 report because of inexperience and in the 2000 appraisals he was shown REPC's that supported a sales price in excess of the listing price in each instance. #AP99-07-12, and #AP02-07-16.

MILLER, CHARLES G., State-Certified Residential Appraiser, St. George, Utah. Agreed to surrender his State-Certified Residential status effective May 28, 2003 and be issued a State License in its place, that he would not apply for a new certification for at least two years, that he will pay a fine of $3,500, that he will take a USPAP course and a course on appraising manufactured housing, and that he will not appraise manufactured homes until he has taken the manufactured housing course. Mr. Miller violated USPAP in four appraisals of property owned by the same owner by failing to collect his own data and using the data supplied by that owner instead. The data supplied by the owner resulted in appraisals that were above the sales prices of the properties appraised. In a fifth appraisal, Mr. Miller violated USPAP by failing to show sales history in the appraisal report, among other things. #AP02-05-10, #AP03-02-16, #AP03-03-11, #AP03-03-12, and #AP03-03-13.

MILLER, DOUGLAS G., State-Certified Residential Appraiser, North Ogden, Utah. Agreed to pay a $1,500 fine in settlement of a case for violating USPAP by failing to report that the seller shown on the contract of sale upon which he relied was different than the property owner shown on his appraisal and by failing to correctly employ recognized methods and techniques. The complaint alleged that a $705,000 appraisal done by Mr. Miller was inflated and

was not based on proper methods. The borrowers on Mr. Miller's appraisal had contracted to purchase the property at $700,000. The sellers on that contract had not yet closed on their purchase of the property. They had contracted to purchase the property at a price of $525,000 from owners who had listed it for sale at a price of 547,800. Respondent maintains that in mitigation, he did analyze the listing price of the subject, but after viewing the area, quality of the construction, and size of the home, his experience led him to believe that the home was worth in the $650,000 to $750,000 range. #AP02-08-12.

PREISLER, JARED L., State-Certified Residential Appraiser, Roy, Utah. Agtreed to pay a $3,000 fine and complete a USPAP course for failing to analyze the current listings of the subject properties and failing to correctly enploy those recognized methods and techniques necessary to produce a credible appraisal in two appraisals involving the same real estate agent and the same mortgage company. Mr. Preisler maintained that he was intentionally misled by the sales agent and the mortgage company when they provided him with comparable sales data to use in his appraisal reports and with a contract of sale that, unknown to him at the time was inflated in order to facilitate a flipping scheme. #AP02-08-11 and #AP02-10-02.

STAPLEY, MICHAEL D., State-Certified Residential Appraiser, West Jordan, Utah. Because of violation of USPAP Standards Ruld 1-1 (a) and Standard 2, agreed to pay a $1,000 fine and that he will not appraise any property that requires an income capitalization approach until after he has successfully completed a course in income capitalization. The Division received a complaint that Mr. Stapley had omitted reference to a single family home when he appraised a property that included a fourplex and a single family home in order to fit the requirements for a typical 2-4 unit residential loan. Mr. Stapley maintains that in mitigation the seller of the home stated that the home was not rented and was being used as a storage unit by the seller, and it therefore did not add value to the property. He also maintains that in mitigation he originally had included the home in the appraisal report, but the lender instructed him to remove the fifth unit from the appraisal. #AP02-08-06.

TIPPETTS, JAMES L., State-Certified Residential Appraiser, Brigham City, Utah. Effective November 26, 2003, certification surrendered for two years and a State License (LA) issued in its place. During the two-year period, he may not sign for, train, or supervise any other appraiser, appraiser trainee or unclassified person earnings points for licensure. He also agreed to pay $4,000. Fine and complete 15 hours of remedial education. Mr. Tippetts admitted violating USPAP Standards Rule 2-3, which requires an appraiser who signs a report to take full responsibility for it and Standards Rule 1-1 (a), which requires an appraiser to understand and correctly employ recognized methods and techniques, among other violations. Various allegations were made about a number of Mr. Tippetts' appraisals, including: that he failed to properly verify sales data; that in the appraisal of a former church building converted to a residence, he failed to take economic obsolescence into account and valued the property too high; that in another appraisal he failed to disclose that the subject property was a legal duplex with two separate structures on the same lot, failed to address the property as two units in his report, and used as comparables single family homes; and that he signed 122 appraisals done by a formerly registered appraiser and did not properly supervise those appraisals. #AP02-12-20.

WARBURTON, BRUCE L., State-Certified Residential Appraiser, Layton, Utah. Surrendered his rights in connection with his pending application for renewal rather than continue to respond to the Division's investigation of complaints, resulting in his no longer being a State-Certified Appraiser as of March 26, 2003. #AP20-01-06, #AP20-01-20, #AP20-02-28, #AP20-04-06, #AP20-08-07, #AP01-08-52, #AP01-10-02, #AP01-11-23, #AP02-11-24, #AP01-12-25, #AP02-03-05, #AP02-04-18, #AP02-05-09, #AP02-08-09, and #AP02-11-06.

WARD, STEPHE N M., State-Certified Residential Appraiser, Salt Lake City Utah. Agreed to pay a $1,500 fine and complete a USPAP course for violating USPAP by relying on an appraisal of the same property that had been done by another appraiser without verifying the information reported by the other appraiser, among other things. The complaint alleged that Mr. Ward went outside the neighborhood boundaries for comparables, although there were numerous comparables that were similar to the subject in style and age that had closed within the previous six months. A listing on the property had expired at sales price of $359,900 two months before Mr. Ward's $455,000 appraisal. Mr. Ward maintained that in mitigation, he did not know the listing history of the subject property at the time he did his appraisal. #AP20-07-16

WESTRA, KYLE S., State-Certified Residential Appraiser, South Jordan, Utah. Agreed to pay a $500 fine and complete a USPAP class for violating Standards Rule 1-1(b) by relying on information about a home that came from a contractor without more thoroughly investigating the property. The complaint alleged that the comparables were far superior in design and construction than the subject property. Mr. Westra maintained that in mitigation the complainant did not inspect the interior of the home and therefore did not realize that the interior had been renovated to remove the functional obsolescence that is generally present in an older home, that he had no intent to push value, and that his appraisal in fact "killed the deal" when it did not come in high enough. #AP99-03-15

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